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I. DESCRIPTION

UNDER §2-9-101, MCA through §2-9-305, MCA, The Department of Administration, Risk Management & Tort Defense Division administers a comprehensive insurance program in behalf of Montana state government and defends and indemnifies state agencies and employees in any TORT claim for damages arising from the lawful discharge of official duties rendered or which should have been rendered in the course of employment and within the scope of duty. This document is not an insurance policy, however, it provides a broad overview of insurance coverages provided under the state's aircraft excess liability and hull policy as well as specific program requirements for state agencies that participate in the state's aircraft liability insurance. Do not attempt to interpret coverages, limits, or exclusions and apply these to state activities without contacting the Risk Management & Tort Defense Division. Specific exclusions, limits, or coverages may apply.

II. DEFINITIONS

Aircraft means any aircraft listed in the state Property/Casualty Insurance Information System that are submitted by the agency and shall include propulsion systems, operating, navigation, and radio equipment usually attached thereto and parts and repair equipment which are standard for the make and type of aircraft. Parts temporarily detached from the aircraft which have not been replaced by other similar parts shall be made part of the aircraft.

Charter means used principally in the business of the state, including passengers or freight carrying for hire or reward and business uses, but excluding instruction of or rental to others.

Commercial means used principally in the business of the state, including instruction, passenger or freight carrying for hire or reward, rental to others for the purpose of state business.

Crew member means somebody who works as a member of the crew of an aircraft or rotorcraft that is essential to the mission of the state.

Disappearance means missing and not reported by 30 days after commencing the last known flight.

Division means the Risk Management & Tort Defense Division.

Federal Aviation Administration means the duly constituted authority of the United States of America having jurisdiction over civil aviation, or its duly constituted equivalent in any other country.

In-Flight means the time commencing with the actual take off of the aircraft and continuing thereafter until it has completed its landing roll,

or if the aircraft is a rotorcraft, from the time the rotors start to revolve under power for the purpose of flight until they subsequently cease to revolve.

In-Motion means while the aircraft is moving under its own power or the momentum generated therefrom or while it is in flight and, if the aircraft is a rotorcraft, any time that the rotors are rotating.

Instruction and Rental means used principally in the business of the state, including business, student instruction, and rental to others.

Medical Expense means expenses for necessary medical, surgical, x-ray, or dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services, but excluding monuments, head stones, or burial plots.

Occurrence means an accident, including continuous or repeated exposure to conditions, which result in bodily injury or property damage during the policy period, neither expected or intended from the standpoint of the state.

Passenger means any person in, on, or boarding the aircraft for the purpose of riding or flying therein or alighting therefrom after a flight or attempted flight therein.

Physical Damage means direct and accidental physical loss of or damage to the aircraft, hereinafter called loss, but does not include loss of use or any residual depreciation of value, if any, after repairs have been made.

Premises means such portions of airports as are designated and used for the parking or storage of aircraft, including premises owned or leased for more than thirty days by the state.

Property Damage means physical injury to or destruction of tangible property which occurs during the policy period, including loss of use thereof, at any time, resulting therefrom, or loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by a covered occurrence.

III. INSURING AGREEMENT

Subject to the terms, conditions, and exclusions in the state's excess commercial aircraft liability policy, the state's policy covers bodily injury or property damage to passengers and others and to physical damage losses to state aircraft, while the aircraft is within the United States of America or Canada while being transported between parts thereof on official state business. For coverage outside of the United States and Canada, please contact the Risk Management & Tort Defense Division.

IV. EXTENSIONS OF COVERAGE

The state's policy is extended to cover:

- A. Most physical damage to state owned aircraft or loss of aircraft, including disappearance of the aircraft, and search & rescue efforts associated with recovery of the aircraft, provided that the aircraft is used with the permission of the state on official business, and is piloted by individuals approved by the State of Montana. Hull coverage does not apply unless specifically requested by an agency. The aircraft is insured to the lower of its stated value as reported by the agency or the actual cost to repair or replace.
- B. Legal liability to others (i.e. damages incurred by others as a result of negligent operation of state-owned aircraft by the state on official state business) provided the aircraft is piloted by individuals approved by the State of Montana.
- C. Temporary use of a substitute aircraft that is being used while a state aircraft is in *for* repair.
- D. Legal liability to others for use of 'non-owned aircraft' approved by the state. Coverage is automatic (i.e. non-reported) provided that the aircraft has a "Standard" airworthiness certificate from the Federal Aviation Administration, and is used for less than 90 days (coverage may be extended for an indefinite period of time exceeding 90 days during a declared state of emergency with approval of the underwriters). Agencies must request coverage for other than legal liability (i.e. hail, fire, arson, etc) from the Risk Management & Tort Defense Division and the coverage must be scheduled by aircraft in order for coverage to apply.
- E. 'Physical damage liability' for use of 'non-owned aircraft' for less than 90 days (coverage may be extended for an indefinite period of time exceeding 90 days during a declared state of emergency with approval of the underwriters).
- F. Automatic coverage {(liability only} for newly acquired aircraft provided

that the aircraft has 10 seats or less (including pilot & co-pilot), is "Standard" Airworthiness, fixed-wing, piston aircraft and is reported within 90 days from the date of acquisition to the Risk Management & Tort Defense Division. (Hull coverage limited to \$2,000,000)

V. EXCLUSIONS

The state's policy does not apply:

- A. If the pilot is not properly certified under current applicable Federal Air Regulations.
- B. If the airworthiness certificate of the aircraft is not in full force and effect.
- C. To any loss arising from war, invasions, revolution, or insurrection.
- D. To claims in consequence of noise pollution, pollution of any other kind, contamination, electrical interference, or interference with the use of property.
- E. To any obligation for which the state or any carrier may be held liable under any workers' compensation, unemployment, disability, or other insurance.
- F. To damages arising out of the use of chemicals dispersed by the aircraft.
- G. To loss or damage arising from capture, confiscation, seizure, arrest, restraint, or detention.
- H. To loss or damage which is due to wear and tear, excessive heat, deterioration, freezing, or mechanical breakdown.
- I. Conversion, embezzlement, secretion, or other forms of fraud.
- J. Aerial photographic or other equipment or accessories, not permanently installed as part of the aircraft, even if in the aircraft at the time of the loss.

VI. AIRCRAFT USE AND TRANSPORT

The purpose of the requirement is to limit the likelihood and the cost of accidents while at the same encouraging the safe and economical use of aircraft for appropriate state business. It is not intended that these guidelines restrict coverage provided under the state's commercial insurance policies. Rather, they are intended to assist pilots, crew, cargo, passengers, and agencies in managing risk.

- A. Only individuals who hold a private, commercial, or airline transport pilot certificate and are on official state business may pilot aircraft in behalf of the state. Agencies with questions should contact the Risk Management & Tort Defense Division.

- B. Pilots who carry passengers on state business are required to possess current pilot and medical certificates, have experience with Federal Aviation Administration Part 61 sub-part E and F, and meet or exceed the “pilot requirements” of this document.
- C. Student Pilots are discouraged from piloting any aircraft on state business.
- D. The safe use of aircraft is encouraged whenever flying gives a clear economic benefit to the state.
- E. All cross country flights require the filing of a VFR (Visual Flight Rule), IFR, or an agency approved flight plan.
- F. Pilots are responsible to comply with all FAA regulations and to keep their certificates, ratings, and records current.
- G. Non-emergency landings should only be made at FAA approved, designated, public-use, airports. Pilots renting aircraft must check with the renting entity to confirm terms of the rental agreement which may further restrict where landings may be made.
- H. Aircraft may be operated from non-FAA approved landing areas should the mission require such activities.
- I. Only persons authorized in advance and in writing by their agency may pilot aircraft on state business. Agencies must keep a register of authorized pilots.
- J. All air cargo must conform to all applicable federal and state laws and rules. Hazardous cargo must be transported by the safest effective means of transportation, not necessarily the cheapest.
- K. Agencies may set more restrictive standards than the minimums contained in these requirements.

VII. PILOT REQUIREMENTS

The purpose of the requirement is to limit the likelihood and the cost of accidents while at the same encouraging the safe and economical use of aircraft for appropriate state business. It is not intended that these guidelines restrict coverage provided under the state’s commercial insurance policies. Rather, they are intended to assist pilots, crew, cargo, passengers, and agencies in managing risk. The following qualifications are recommended for any pilot seeking to operate a state owned or leased aircraft. Pilots should:

- A. Have a current FAA medical certificate.
- B. Have at least a Private Pilot certificate issued by FAA for the class and category of aircraft to be operated.

- C. Have satisfied FAA biennial flight requirements.
- D. Have registered their certificate with the Aeronautics Division.
- E. Have authorization from the agency to pilot aircraft on state business, and, if applicable, to carry passengers.
- F. To operate complex single-engine piston aircraft, a pilot must have at least 25 hours, pilot-in-command, in an aircraft with retractable gear, variable pitch propeller, turbo-charged engine, or pressurized cabin.
- G. To operate a twin-engine piston aircraft, a pilot must hold a commercial multi-engine pilot certificate with current instrument rating. The pilot must have logged 1,500 hours total with 100 hours in multi-engine aircraft. For all aircraft, pilots must have logged at least 25 hours in the type of aircraft to be flown (5 hours in the last 6 months).

VIII. AIRCRAFT WORTHINESS

It is recommended that all aircraft:

Be maintained in working order in compliance with annual inspection criteria and manufacturer's recommendations, or in compliance with a progressive maintenance program.

IX. PASSENGERS

Passenger safety is primary in the use of an aircraft. No passenger should be asked to ride in an aircraft piloted by anyone other than a qualified and proficient pilot.

- A. Passengers must be state officers, employees, or agents on state business. They may also include state clients when necessary to the client's or public's health or safety or to the agency's mission.
- B. It is recommended that no more than two top management level employees of any agency fly in the same private aircraft.
- C. Passengers should be thoroughly briefed by the pilot before boarding so as not to approach or depart from an aircraft while the engines are running and to insure that each wears a seat belt and follows all safety directives.

X. AGENCY PILOT VERIFICATIONS

It is required that the agency authorizing an employee to pilot an aircraft on state business on an annual basis:

- A. Confirm that the pilot has current medical certificates.

- B. Confirm that the pilot has met biennial flight review requirements.
- C. Have the pilot sign the pilot history form stating that he/she will abide by this policy.
- D. Maintain a file on each . The file should include, at least, an up-to-date copy of the Risk Management & Tort Defense Division's pilot history and qualifications form (attached).

XI. PROGRAM REQUIREMENTS

- A. State agencies must listing the aircraft and rotorcraft that they want insured as well as the stated value of the aircraft, which is the amount that the aircraft is insured to in the event of a loss, in the state Property/Casualty Insurance Information System, by April 15th of each fiscal year. Aircraft are insured only to their stated value and not at replacement cost. Updated pilot histories must also be filed and sent to the division periodically as requested.
- B. State agencies that desire hull (physical damage) coverage for non-owned aircraft shall report these aircraft to the Risk Management & Tort Defense Division and the aircraft must be listed on the state's aircraft insurance policy.
- C. Participating carriers shall be permitted to inspect the aircraft and any associated records at any time but are under no obligation to do so.
- D. The state's policy may be cancelled with 30 days notice. Should this occur, the Risk Management & Tort Defense Division will attempt to secure coverage from other carriers.
- E. The state's policy may be void if the state has concealed or misrepresented material facts or circumstances.

XII. SPECIAL SERVICES

- A. State agencies that need coverage for something not mentioned or something excluded or limited by the state's policy, are encouraged to contact the Risk Management & Tort Defense Division. The division or its brokers may be able to form a plan of self-insurance to assist your agency. Any plan must be consistent with §2-9-201, MCA. The division may have to obtain legislative approval for the plan. The division may be able to obtain commercial insurance to meet your needs.
- B. The Risk Management & Tort Defense Division may be able to help you develop a risk control plan that will remove or reduce your need for coverage.

XIII. REPORTING LOSSES

The ***State Report of Incident Form*** should be used. State agencies must notify the Risk Management & Tort Defense Division of a claim or potential claim as soon as possible, preferably within 5 business days. Fatalities and personal injuries should be reported within 24 hours. Claims that are not reported within a reasonable period of time may be denied. Attach supporting information, such as:

1. Evidence of state ownership or responsibility;
2. Copy of any police or fire department report;
3. Repair estimates, photographs, other data on cost of the damage.
4. Information on any adverse party's insurance;

Sample forms may be found on the division's website under 'Claims' or in the Risk Management Program manual. You may photocopy them (front and back) as needed.

XIV. LIMITS

Excess limits of \$10,000,000 per occurrence are payable by the state's excess liability insurance carriers. Loss limitations of \$1,000,000 per occurrence for non-owned physical damage (legal liability only) and \$250,000 search and rescue apply. Coverage for hull (i.e. physical damage) is limited to the lower of the cost to repair/replace to the stated value of the aircraft.

XV. DEDUCTIBLES

There is no aircraft liability deductible for state agencies. The Risk Management & Tort Defense Division pays the first \$750,000 per claim and \$1,500,000 per occurrence. A 5% of stated value deductible applies while-in-motion; \$1,000 while not-in-motion. The agency pays the first \$1,000 of each loss.

XVI. PREMIUMS

Premiums must be promptly remitted by state agencies after receiving billing notices from the Risk Management & Tort Defense Division.

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